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FLASH REPORT

Country:	France
Title:	Paris Tribunal de Grande Instance, 17 December 2018: n° 17/06217, 17/06216, 17/06214
Date:	22 January 2019
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Update of flash report:	France - Court of cassation, First Civil Chamber, 9 November 2016, nos 15-24.207 to 15-25.877 regarding the liability of the State for racial profiling in police controls (PDF 131 kB)
<u>Context</u>	
Issue at stake:	Evidence of racial profiling in identity controls by police
Ground of discrimination:	Racial or ethnic origin
Source:	National court decision
Field:	Public service
Applicable law:	Article 78-2 of the Code of Penal procedure, Article L141-1 of the Code of Judicial Organisation, Law n° 2008-496 of 27 May 2008

Content

Three high school students from Epinay-sur-Seine in Seine-St-Denis, returning from a school day trip with their professor to Brussels on 1 March 2017, were the only passengers subjected to police controls on the train platform when stepping out of the train in Gare du Nord.

They initiated a liability claim against the state alleging discrimination by the police on the ground of origin.

Their counsel immediately filed an official request to receive communication of the grounds of the police controls and filed a complaint with the Defender of Rights.

The police Authorities were not in a position to provide the tapes recording the controls.

The police's justification is based on the size of the bags of the students considering the context of terrorism and drug controls, and for the third student, the State invokes the State prosecutor's requisition related to the control of international transport zones.

The state argues that considering that the class was exclusively composed of black and North African teenagers, the choice to control the said three students cannot be based on their origin.

The Defender of Rights adopted a decision to present observations before the Court (decision 2018-257) stating that given the context and the fact that the three students singled out were black and of North African origin, the State had the burden of establishing that the control was justified. He concluded that the police's justifications based on the size of the bags, were not convincing considering that all persons present were train passengers on an international train. In addition, he argued that these controls were typical of racial profiling that targeted mainly young black and North African men and that no comparison was required considering that no other person had been controlled.

Decision of the Court: The Court dismisses the claim for liability of the State on the ground of discrimination by the police stating that considering the composition of the class the choice of these students cannot be based on their racial origin, and that the state provided sufficient justification of the legal grounds of the controls.

Key points of analysis: The three decisions have been appealed, Plaintiffs arguing that the Court did not properly apply the burden of proof and made an erroneous application of the indications given by the Court of cassation in its landmark decisions of the First Civil Chamber, 9 November 2016, nos 15-24.207 to 15-25.877.

These cases raise the question of the burden of proof of discrimination on the ground of origin when the facts in themselves do not allow a comparison *in concreto* with the treatment of other persons who were present at the time of the control, the issue of whether a comparison is necessary to establish discrimination on the ground of origin and how a comparison is to be structured when it is relevant.

Considering that an official claim was filed in the days following the police controls, Plaintiffs' lawyer criticises the judge's failure to take into consideration the fact that the state could not produce the tapes in analysing whether the state has met its burden of proof in justifying that the controls were not discriminatory.